

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 56 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHOBHA KHANNA

Versus

LT.COL.SUKESH CHANDER

Appearance:

MR AKSHAY H MEHTA for Petitioner
MR AMAR BHATT for Respondent No. 1
MR KV SHELAT for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/02/2000

ORAL JUDGEMENT

1. It is an unfortunate litigation in between husband and a wife and more unfortunate is that they are of advanced age having grown-up children who are residing with the petitioner.

2. The petitioner filed a regular civil suit No.210 of 1995 in the court of 2nd Jt. Civil Judge (S.D.), Vadodara for declaration that the suit properties belong to her and that the respondent- defendant has no right, title over it and no right to sell, gift, exchange or alienate any of the suit properties in any manner whatsoever. Prayer has also been made for direction to the respondent to transfer the ownership of the suit properties and the fixed deposits forming subject matter of the suit in favour of the plaintiff-petitioner. Along with the suit, the plaintiff-petitioner filed an application for grant of temporary injunction. Learned trial court under its order dated 19th July, 1995 allowed the application aforesaid partly and ad-interim injunction is granted relating to the prayer restraining the defendant-respondent from transferring the suit shop situated at Productivity Road, Baroda only. Prayer for injunction re. other properties has been declined. The petitioner filed an appeal before the appellate court which came to be rejected under the order dated 30th November, 1995. The respondent has also filed cross-objections against the order of the learned trial court which was also dismissed under the impugned order. The defendant-respondent however has not further taken up the matter but the petitioner filed this revision application.

3. Learned counsel for the petitioner contended that both the courts have committed material irregularity in exercise of their jurisdiction in not accepting the case of the petitioner. It is a case where the suit properties were purchased by the defendant-petitioner from money of the petitioner. The petitioner got a handsome amount from her parental side in a compromise in the suit. That money was utilised for purchasing of the suit properties and as such she is the owner of these properties irrespective of the fact that same stand in the name of the defendant-respondent. It has next been contended that the petitioner is praying for innocuous order of restraining the defendant-respondent from transferring or alienating by way of sell, gift, exchange etc. of the suit properties and which prayer should have been granted for all the properties and not only for the shop. It is contended that during the pendency of this revision application, the respondent has sold the flat at Anand House, Phase III to respondent No.2 and now the injunction be granted against the respondent No.2 not to further alienate or transfer or dispose of the said flat in any manner whatsoever.

4. Shri Amar Bhatt, counsel for the respondent No.1 contended that all these properties exclusively belong to the respondent No.1 and he is in possession thereof. These properties have been purchased by the respondent No.1 from his own money which he received on his retirement. The respondent No.1 retired as a Lieutenant Colonel. It has further been contended that all these properties stand in the name of the respondent No.1. Carrying this contention further, the learned counsel for the respondent No.1 submitted that the first appellate court has rightly given out that whatever amount which the petitioner received from his parental side under the compromise arrived at in the special civil suit No. 74 of 1986 is received after the purchase of these properties and as such there cannot be any nexus between the money received by her and purchase of the properties. Dishonesty developed in the mind of this lady and taking the advantage of the position, she filed the suit with the object and purpose only to harass the respondent No.1.

5. Shri K.V. Shelat, learned counsel for the respondent No.2 with all vehemence at his command contended that the respondent No.2 is a bonafide purchaser. He has purchased this flat after taking due precautions. After he was satisfied with the title of the respondent No.1, he purchased this property and against him no injunction may be granted.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. The courts below have not committed any error or illegality whatsoever much less a material irregularity in exercise of their jurisdiction in passing of the impugned orders. It is not in dispute that all these properties stand in the name of respondent No.1. The respondent No.1 retired as a Lieutenant Colonel and possibly he would have received the retirement benefits. If we go by the dates on which these properties were purchased and the date on which the amount has been received by the petitioner from her parental side under the compromise which have been entered into between the parties and in the suit referred above, the learned first appellate court is correct in its approach that this money has no relation whatsoever with the purchase of these properties. These properties have been purchased much earlier to the date on which she received the money. In the facts of this case, learned both the courts below are perfectly correct in their approach not to grant any temporary injunction in favour of the petitioner in

respect of all the properties. So far as the suit shop is concerned, I have my own reservation whether any injunction could have been granted but the courts below taking into consideration the equitable as well as justice oriented approach granted injunction. Any transfer of the suit property is made during the pendency of the litigation, the doctrine of lis pendens will apply and certainly the transfer of the property will be subject to the decision in the suit. Even in such matters, transferee may not be a necessary party to the suit. In execution of the decree, the transferee will have to deliver the vacant possession of the suit property to the decree holder. This position of law is well-settled and in view of this settled position of law otherwise also, it is not a case where temporary injunction in totality deserves to be granted in favour of the petitioner as what it is prayed in Ex.5.

8. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

zgs/-